

**FINAL REPORT
OF THE
INTERIM STUDY COMMITTEE ON
JUVENILE LAW AND
CORRECTIONS ISSUES**



**Indiana Legislative Services Agency
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November 2003

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Interim Study Committee on Juvenile Law and Corrections Issues

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November 2003

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FINAL REPORT

Interim Study Committee on Juvenile Law and Corrections Issues

I. LEGISLATIVE COUNCIL DIRECTIVE

The Legislative Council directed the Committee to study the following:

- A. Juvenile Law Commission topics (SB 229).
- B. Prison system issues (SB 336).
- C. County juvenile corrections funding (Legislative Council).

II. INTRODUCTION AND REASONS FOR STUDY

Juvenile Law Commission Topics: In April 2002, an executive order was signed by the late Governor O'Bannon which created a Juvenile Law Commission to study and propose to

the legislature, judiciary, and the governor revision in the laws governing children in need of services and juvenile delinquents and the law governing their parents, guardians, and custodians. It is believed that the best interests of our children and our citizens are best served by having the laws affecting the component parts of the juvenile justice system studied as a whole rather than as separate units.

During the 2003 General Assembly, SB 229 proposed creating a Commission on Juvenile Law that would recommend changes in juvenile law to the Legislative Council by January 1, 2004.

Prison System Issues: SB 336 proposed a Prison System Issues Study Committee to do the following:

- Investigate possible trafficking in tobacco and other contraband within the state prison system.
- Study other issues relating to the state prison system that the Committee considers relevant.
- Study any issues assigned to the Committee by the Legislative Council.

County Juvenile Corrections Funding: Under IC 11-10-2-3, counties pay for half of the per diem costs of juveniles who are committed to the Department of Correction (DOC) as delinquents. As of October 2003, 44 counties owed the Department of Correction \$72 million in unpaid balances. The Committee was asked to examine this issue.

III. SUMMARY OF WORK PROGRAM

The Committee met six times over the course of the interim.

At the first meeting, the Committee members reviewed the charges of the Committee. The Committee also initially discussed these other issues:

- County Juvenile Corrections Funding.
- Tobacco and Other Prohibited Items.
- Gang Activity.
- Medical Issues.

At the second meeting, the Committee examined in more detail the status of the Juvenile Law Commission and issues associated with funding juvenile delinquent incarceration.

At the third meeting, the Committee traveled to Westville Correctional Facility to hear testimony by offenders about the type of medical care that they are receiving and heard from an offender who is currently on parole on the types of programs that offenders need to make a successful transition from prison.

At the fourth meeting, the Committee examined the issue of tobacco trafficking in DOC facilities.

At the fifth meeting the Committee discussed the issues of offender medical treatment, whether legislation was needed to address the problems of tobacco trafficking in DOC facilities and unpaid balances owed by counties to the State General Fund for the commitment of juvenile delinquents to DOC.

At the final meeting, the Committee met Kelly Whiteman, the Ombudsman to the Department of Correction, recommended legislation and approved the final report.

IV. SUMMARY OF TESTIMONY

The Committee heard testimony from presenters on the following topics:

Juvenile Law Commission: Mr. Joseph Koenig, Executive Director of the Criminal Justice Institute, updated the Committee members about the activities of the Juvenile Law Commission. The Commission, which was created by executive order in April 2002, has conducted three meetings since its inception.

The Commission members identified a series of short-term goals to be completed before the 2004 General Assembly. These goals include:

- Modifying Indiana law as it relates to juvenile delinquents and status offenders to ensure compliance with the federal Juvenile Justice and Delinquency Prevention Act of 2002.
- Examining confidentiality issues.
- Addressing school attendance and truancy issues.

Under current Indiana law, juveniles are placed in facilities upon arrest and after conviction based on the court jurisdiction and not on their age. Consequently, juveniles who are under the age of 18 and waived or excluded from juvenile court may be placed with adult offenders. At times, these placements before trial may not be in the best interests of the safety of these juveniles. The Commission members examined a proposal to allow status offenders to be placed in juvenile correctional facilities and juvenile detention facilities, but did not recommend any changes in commitment laws.

The Juvenile Law Commission is also examining a proposal that would do the following:

- Define in statute status offenses including truancy, possession of alcohol, curfew violations, and disobeying parents or guardians.
- Separate juveniles from adults in jails.
- Add training for staff who supervise both juveniles and adults in county facilities where juvenile and adult facilities are located in the same area.

This proposal would make Indiana's state laws comply with federal laws concerning placement of juveniles and ensure that Indiana continue receiving federal funding for juvenile delinquency prevention and intervention programs. Some Commission members are interested in determining whether these changes would result in the state and counties incurring added costs that would exceed what they would receive in foregone federal revenue.

As a long term goal, the Commission would be comprehensively examining the structure and method by which a series of services are delivered to children and families and determining whether these need to be restructured.

Payments for Juvenile Incarceration and Outstanding Balances: Matt Brooks of the Association of Indiana Counties testified to the Committee about the problems associated with unpaid balances to the Department of Correction and a proposed solution to the problem.

The Association of Indiana Counties proposed the following:

- Change the county rate for incarcerated juveniles from 50% of the per diem to \$50 per day per juvenile.
- Cap the charge per juvenile at 365 days. After 365 days, the state would pay the entire costs of housing the juvenile.
- Give counties with an outstanding balance a six-month lag to begin paying current outstanding balances.
- Allow counties with large balances to place this debt outside the property tax levy limit for a period of four years so that the final payoff of debt will be made within that four-year period.
- Do not allow any monies collected by the Department of Revenue for counties to be held by the state for repayment of the balances owed.

The Chairman of the Committee, Rep. Vernon Smith, introduced a proposal by the

House Democratic Leadership that all outstanding balances be paid in full as soon as possible and that, in the future, counties should either build juvenile detention facilities or make payments in advance for any new juvenile offenders who are committed to the Department of Correction.

Medical Treatment of Offenders: The Committee heard testimony from the following offenders about the specific medical problems that they believe have not been properly treated by DOC:

- Mark Gaston, Wabash Valley Correctional Facility (by video conference).
- Ervin Hall-Bey, Wabash Valley Correctional Facility (by video conference).
- Kenneth Karn, Wabash Valley Correctional Facility (by video conference).
- Riley Mosley, Indiana State Prison (by video conference).
- Donald Lock, Maximum Control Facility (by telephone).

The Committee also heard testimony from Dean Rieger, M.D., Director of Medical Services for the Department of Correction.

During the meeting, the offenders testified about injuries and chronic conditions that have not been treated by medical staff at different facilities. Other offenders have written letters to legislators with similar complaints. DOC staff indicate that, given limited budgets, the Department must distinguish between treatment that is medically necessary to save a life or to mitigate extreme pain and a treatment that is desirable. DOC provides treatment if medical staff consider it to be necessary. But DOC will take other considerations into account if medical treatment will take care of pain or discomfort that is not considered extreme or life threatening.

As an example of other factors that are taken into account, a prison facility's medical staff has recommended that an offender be permitted to purchase footwear to mitigate pain. If these recommendations are not actual orders due to medical necessity, the security staff in the prison facility may decide whether an offender may use the item based on this item's threat to security.

Tobacco Issues: Douglass Thompkins testified on the potential costs and benefits of the current tobacco ban in DOC facilities. Essentially, Mr. Thompkins told the Committee that DOC incurs costs for delaying the release of offenders who would otherwise have clear conduct records and denies these offenders the opportunity to participate in educational and other programs. There is also a clear reduction in positive drug tests, which is linked to the demand for tobacco versus the demand for illegal drugs as tobacco becomes the drug of choice.

Randy Koester, Dean Rieger, M.D., and Al Parke, Superintendent of the Putnamville Correctional Facility, defended the existing tobacco ban. They cited the reduction in long term medical costs for offenders, cleaner facilities, and the reduction in the use of illegal drugs in state facilities.

V. COMMITTEE FINDINGS AND RECOMMENDATIONS

The Committee made the following findings of fact and recommendations.

Juvenile Law Commission

The Committee made no findings concerning the Juvenile Law Commission.

Unpaid Balances for Delinquents Incarcerated By DOC

Findings of Fact: As of October 2003, 44 counties owed the Indiana State Government \$72 million in uncollected reimbursements.

Recommendations: The Committee made these two recommendations:

1. Counties need to pay the unpaid balance of these uncollected reimbursements.
2. Any monies collected by the Department of Revenue for counties should not be held by the state for repayment of the balances owed.

Medical Treatment of DOC Offenders

Findings of Fact: The Committee made the following findings:

1. Due to the limitations in DOC's budget for health care provisions, DOC has to distinguish between medical treatment to save a life or to mitigate extreme pain and treatment that will allow offenders to be more comfortable and function better in the correctional settings.
2. The General Assembly has funded the Bureau of Ombudsman to the Department of Correction. The Governor has appointed Kelly Whiteman to serve as the Director of the Bureau.

Recommendations: The Committee recommends that offenders and family contact the Ombudsman about their concerns about medical treatment issues.

Tobacco Ban in DOC Facilities

Findings of Fact: The ban on tobacco products in Indiana correctional facilities has been in effect since August 1, 1997.

Benefits associated with the ban include:

- Random drug tests of the adult corrections population have declined from 9% to 3% of the population tested; drug use among offenders on parole has also declined.
- Facilities are cleaner due to the absence of smoke.
- Fewer incidences of fires being set.
- Reduced medical treatment costs in the long run.
- Secondhand smoke litigation by the Indiana Civil Liberties Union was dropped after the smoking ban was introduced.

Costs associated with the ban include:

- Relatively low-paid custody staff are more likely to engage in tobacco trafficking resulting in suspensions and more forced overtime work for other staff.
- Offenders with clear conduct reports violate tobacco bans and serve additional time.
- Offenders who violate tobacco bans will also be denied eligibility for educational programs, institutional work, or housing privileges.

If the number of good conduct days denied because of smoking violations is high enough, then a number of offenders who have otherwise clear conduct reports will be spending additional time in prison taking up limited bed space. Whether the costs outweigh the benefits will depend on the added number of days that offenders will spend in prison solely due to smoking-related violations compared with the avoided medical costs associated with smoking-related diseases.

Recommendations: The Committee recommends introduction of PD 3412. This bill would make trafficking of a tobacco product with an inmate a Class D felony if the trafficker is an employee of the Department of Correction or a penal facility.

WITNESS LIST

Juvenile Law Commission:

Joseph Koenig, Executive Director, Criminal Justice Institute

County Payments for Juvenile Commitments to DOC:

Matt Brooks, Association of Indiana Counties

Medical Treatment of Offenders:

Mark Gaston, Wabash Valley Correctional Facility (by video conference)
Ervin Hall-Bey, Wabash Valley Correctional Facility (by video conference)
Kenneth Karn, Wabash Valley Correctional Facility (by video conference)
Riley Mosley, Indiana State Prison (by video conference)
Donald Lock Maximum Control Facility (by telephone)
Dean Reiger, M.D.

Tobacco Ban in Correctional Facilities:

Douglass Thompkins, Ph.D. candidate, University of Illinois at Chicago
Randy Koester, Deputy Director for the Department of Correction
Dean Rieger, M.D., Director of Medical Services, Department of Correction
Al Parke, Superintendent of the Putnamville Correctional Facility
Jerry Vance, Substance Abuse Program Director, Department of Correction

Ombudsman to the Department of Correction:

Kelly Whiteman, Ombudsman